



**THE ATTORNEY GENERAL  
OF TEXAS**

**CRAWFORD C. MARTIN  
ATTORNEY GENERAL**

**AUSTIN, TEXAS 78711**

March 17, 1971

Senator Joe Christie, Chairman  
State Senate Nominations Committee  
State Capitol  
Austin, Texas 78711

Opinion No. M-814

Re: Amending term of  
office of Rio  
Grande Compact  
Commissioner from  
two to six years.

Dear Senator Christie:

Your request for our opinion concerning proposed legis-  
lation propounds one question:

"Can the term of office of the Rio Grande Compact  
Commissioner lawfully be extended from two years  
to six years?"

The Rio Grande Compact entered into between the States  
of Colorado, New Mexico and Texas, and the United States was  
ratified by Texas on March 18, 1938 (Acts 1939, 46th Leg.,  
Spec. L., p. 531). Complementary Laws: U.S.-Public No. 96,  
May 31, 1939, Ch. 155, 53 Stat. 785; Colorado-Laws 1939, Ch.  
146; New Mexico-Law 1939, Ch. 33, p. 59. The Compact is  
codified as Article 7466e-1, Vernon's Civil Statutes.

Article XII of the Compact provides that the Texas Com-  
missioner shall be appointed by the Governor of Texas. The  
State Engineers for the other two States serve as respective  
Compact Commissioners. No limitation of term is provided in  
the original Compact. Section 2 of Article 7466e-1, Vernon's  
Civil Statutes, provides that the Texas Commissioner shall  
hold office for two years and until his successor is appointed  
and qualified.

You have further advised us that the purpose of the pro-  
posed legislation is to give more continuity and stability  
to the Texas representative on the Rio Grande Compact for  
the best interests of the people of Texas, and that in the  
case of the Texas Commissioner, that he also administers an  
area of the Rio Grande in New Mexico above El Paso up to  
and including Elephant Butte.

As precedent, in 1961, the Legislature of Texas amended the terms of office on the Sabine River Compact from two to six years. Acts 1961, 57th Leg., p. 31, Ch. 19, Sec. 1 and 2, and at p. 381, Ch. 192, Sec. 1, Art. 7466i. In that Compact, the basic document required amendment because the two year term was originally written into Article VII thereof.

The basic question is: Does the Rio Grande Compact Commissioner for Texas come within the restriction of Article XVI, Section 30 of the Texas Constitution? It is our opinion that he does not, because of the legal effect of the Rio Grande Compact. Whenever, by the agreement of two or more concerned States with the consent of Congress, an interstate compact is created, it has the same effect as a treaty between sovereign powers. Boundaries established by compact become binding upon all citizens of the signatory states. Poole v. Fleeger, 11 Pet. 185, 209 (1837); Rhode Island v. Massachusetts, 12 Pet. 657, 725 (1838). Private water rights become affected without judicial determinations on an interstate stream by compact. Hinderlider v. La Plata Co., 304 U.S. 92, 104, 106 (1938). Congress has authority to compel compliance with such compact. Virginia v. West Virginia, 246 U.S. 565, 601 (1918). Final construction of a party state's Constitution rests in the U. S. Supreme Court. Dyer v. Sims, 341 U.S. 22 (1951).

Compacting states in effect surrender a portion of their sovereignty. Henderson v. Delaware River Joint Toll Bridge Comm., et al, 66 A 2d 843 (Sup. Ct. Pa. 1949); Delaware River and Bay Authority v. Carello, 222 A 2d 794 (Del. 1966); 34 Yale Law Journal 685, "The Compact Clause of the Constitution." Therefore, state constitutional restriction on terms of intrastate officials would not control terms of interstate officials.

However, certain intrastate officers have been held not to be within the class covered by Section 30 of Article XVI, e.g. an attorney at law. Ex Parte Williams, 20 S.W. 580 (Tex. Crim. App. 1892); members of the Civil Judicial Council and presiding Judges of an Administrative District. Atty. Genl. Opin. Nos. M-305 (1968) and M-505 (1969).

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The Rio Grande Compact Commissioner, representing Texas on an interstate stream, and further administering the stream within and without the State of Texas, is not the type of state official within the prohibition of Article XVI, Section 30, Texas Constitution, and therefore, the Texas Legislature may provide for his term in excess of two years. Article XVI, Section 30a.

Article 7466e-1, Vernon's Civil Statutes, as well as Section 41.004, Title 3, Chapter 41 of S.B. 260 and H.B. 343, should be appropriately amended to accomplish this purpose.

S U M M A R Y

The term of office of the Texas Rio Grande Compact Commissioner may be extended beyond two years. Sections 30 and 30a of Article XVI, Texas Constitution, do not cover this type of office.

Yours very truly,

CRAWFORD C. MARTIN  
Attorney General of Texas

By   
NOLA WHITE  
First Assistant

Prepared by Vince Taylor  
Assistant Attorney General

APPROVED:  
OPINION COMMITTEE

Kerns Taylor, Chairman  
W. E. Allen, Co-Chairman

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Jim Swearingen  
Malcom Smith  
Roger Tyler  
J. C. Davis

MEADE F. GRIFFIN  
Staff Legal Assistant

ALFRED WALKER  
Executive Assistant